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**A SUMMARY OF SELECTED BILLS
TRULY AGREED TO AND FINALLY PASSED
By The
89th General Assembly
First Regular Session**



**Prepared By
Office of State Courts Administrator
July 1997**

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INTRODUCTION

In their role of interpreting the statutes of Missouri, judges have a potential interest in almost any bill enacted. However, for this synopsis certain bills have been selected which appear to have a direct impact on the workload or procedures of the courts, or which appear likely to come to the attention of the courts within a short time. Some bills, which may provide for specific types of cases which are expected to be of low volume and therefore not of general interest, have not been included in this summary.

The individual summaries cover the major points of the bills or those sections that affect the courts, but they do not address every issue in each bill and should not be read as a substitute for reading the bill in the context of the entire chapter in the statutes.

Because of the disparate provisions in many of the bills, they have not been arranged by subject matter, but in numerical order. A table of contents is provided at the front of this document.

Except for the bills marked "vetoed," all bills included in this summary have been signed by the Governor. Signed bills become effective August 28, 1997, unless otherwise indicated. We have indicated the date signed on those bills with an emergency clause.

For a copy of any bill, please direct your request to:

Senate Bill Room
State Capitol
Jefferson City, Missouri 65101

House Post Office
State Capitol
Jefferson City, Missouri 65101

Staff of the Office of State Courts Administrator are willing to assist you in obtaining further information about any of the legislation.

SENATE BILLS

CCS #2 HS HCS SCS SB 16 CAMPAIGN FINANCE LAWS

This bill revises the lobbying, conflict of interest and campaign reporting statutes. It contains numerous provisions, including the following.

Individuals lobbying the judiciary re purchasing decisions must register as lobbyists.

Currently, candidates for statewide office, the General Assembly, judicial office (except municipal judge) and certain municipal offices are excluded from reporting requirements if aggregate contributions and expenditures do not exceed \$1,000 per election and an exemption statement is filed. This act changes the dollar amount to \$500 and requires filing a statement of limited activity in addition to the exemption statement. The deadline for filing notices of rejection is changed from 12 to 30 days before the election. Nonpartisan candidates for Supreme Court, Circuit Court, Associate Court or candidates for political party office, county office and municipal office in cities with 100,000 or less shall be exempt from reporting requirements if the aggregate expenditures and contributions do not exceed \$1,000 and an exemption statement is filed.

The bill also contains a provision requiring complaints about judges' ethical violations to be brought before the Missouri Ethics Commission.

The bill provides that, where a special prosecutor has been appointed, the court shall allow an attorney's fee for prosecutorial services. This fee is to be assessed as costs, in accordance with rules and regulations promulgated by the Office of State Courts Administrator, subject to funds appropriated to OA. If the ethics commission does not have sufficient funds to pay a special prosecutor, the case is to be referred to the prosecutor having criminal jurisdiction.

The act limits contributions to candidates for judicial offices in the same manner and same amounts as set in current law for candidates of other offices. Chapters 105 and 130, RSMo

CCS HCS SCS SB 56 HABEAS CORPUS

This legislation makes changes in how mental illness of the defendant is handled in criminal cases; creates new offenses relating to sexual misconduct involving a child; requires local law enforcement to provide a list of registered sex offenders upon request; creates the crime of class A felony child abuse; requires prisoners who seek to bring a civil action to pay fees and costs unless truly indigent and allows for dismissal of a claim under certain circumstances; and, establishes criteria to enable Missouri to be an "opt in" state under the new federal habeas corpus bill. 547.200, 552.020, 556.036, 566.617, and 568.060, RSMo 1994

CCS HS HCS SCS SB 89 REGIONAL JAIL DISTRICTS (Similar to SB 218.)

Changes the law that allows counties other than charter counties with a population over 400,000 to impose up to 1/2 of 1% sales tax for the purpose of providing law enforcement services to also allow a 1/8 of 1% sales tax for the same purpose. Also expands the authority of regional jail districts and provides that a county that belongs to a regional jail district may not withdraw from the district because it does not approve of the district's proposed budget.

CCS HS HCS SCS SB 89 REGIONAL JAIL DISTRICTS (Similar to SB 218.) (Cont.)

This bill also creates the crime of "damage to jail property," a class D felony.

The bill provides that certain crimes, in which a mental state is not prescribed, may be established when evidence exists that the defendant acts purposely or knowingly. A culpable mental state is not required when imputation of such mental state is clearly inconsistent with the purpose of the criminal statute. 49.310, 67.582, 221.010, 221.111, 221.400, 221.405 and 221.410, 562.021 and 562.026 RSMo 1994

HS SS SB 97 MENTAL HEALTH REPORTS

~~WET FOED~~
This bill relates primarily to the confidentiality of mental health reports. It contains a provision requiring that the records of a person acquitted based on a finding of mental disease or defect shall be closed records but shall be available to law enforcement agencies, child care agencies, and certain residential care facilities. It also provides that a social worker is not compelled to disclose client information when testifying except upon court order. 337.636, 337.639 and 610.105, RSMo 1994 and 630.155, 630.167 and 630.710, RSMo Supp. 1996

CCS HS HCS SS SB 121 SEAT BELTS

Makes several changes in the seat belt law including: all passengers in a car age four through age fifteen must wear seat belts, whether they sit in the front or back seat; drivers and front seat passengers of pickup trucks and persons under age eighteen who are operators or passengers in a pickup truck must wear seat belts; with some exceptions, no one may ride in the open bed of a pickup truck and a driver violating this provision is guilty of a class C misdemeanor. 307.178, RSMo 1994 and 301.030 and 307.173, RSMo Supp. 1996

CCS HS HCS SB 218 REGIONAL JAIL DISTRICTS (There are similar provisions in SB 89.)

Changes the law that allows counties other than charter counties with a population over 400,000 to impose up to 1/2 of 1% sales tax for the purpose of providing law enforcement services to also allow a 1/8 of 1% sales tax for the same purpose. Also expands the authority of regional jail districts and provides that a county that belongs to a regional jail district may not withdraw from the district because it does not approve of the district's proposed budget.

This bill also creates the crime of "damage to jail property," a class D felony. 49.310, 67.582, 221.010, 221.111, 221.400, 221.405 and 221.410, RSMo 1994

CCS HCS SS SB 248 JUDICIAL PROCEDURES (Please see appendix for section-by- section summary.)

This bill will: extend the sunset clause on the court automation fee; codify current practice with regard to notice to courts of unsatisfied bond forfeitures; provide authority for municipal courts to opt into the court automation project; institutionalize funding for judicial branch training; clarify the weapons authority of court marshals; increase the salary cap on circuit court marshals' salaries; provide for the Jackson County Drug Court Commissioner to be state paid, with full reimbursement of costs from local earmarked taxes; revise the cap on court fee growth; clarify the distribution of court fees prior to §488.018 becoming effective; earmark fee income to fund the central violations bureau; make numerous technical changes in the law, primarily to facilitate court automation; define courts of record; repeal the deadline for exercise of certain local option fees; add two House and two Senate members to the Missouri Court Automation Committee; and authorize municipal courts to withhold a portion of local revenues for judicial education.

CCS HCS SS SB 248 JUDICIAL PROCEDURES (Please see appendix for section-by- section summary.) (Cont.)

Courts are required to notify the Department of Insurance of unsatisfied bail bond judgments, and Insurance will notify presiding judges of monthly listings of qualified bail bond agents and unsatisfied bond forfeitures.

Municipalities will be granted authority to opt into the court automation project by imposing the fee and entering into an agreement with the judiciary. The provision is discretionary on both sides.

Section 476.057 authorizes inter-treasury transfer of a portion of state fee income to be used to support training and education of judicial personnel. 115.575, 217.730, 302.225, 374.715, 429.470, 429.490, 476.010, 476.050, 476.055, 509.030, 511.500, 513.045, 543.335, 545.040, 545.050, 545.060, 545.070, 545.240, 545.270 and 559.615, RSMo 1994 and 217.305, 476.083, 476.385, 477.600, 478.466, 488.015, 488.020, 512.050, 559.027, 559.029, and 577.051, RSMo Supp. 1996 and 56.765, 57.290, 67.133, 429.090, 429.120, 452.345, 476.053, 479.260, 511.510 and 590.140 as versions of such sections appear in RSMo 1994 and in RSMo Supp 1996, and 595.045, RSMo Supp. 1996 contained in house committee substitute for senate bill 769.

HCS SCS SB 265 DURABLE POWER OF ATTORNEY

Makes various changes in Missouri's Durable Power of Attorney law. Clarifies the extent of an attorney in fact's power to act on behalf of his principal.

An attorney in fact who is granted general powers is not expressly limited to the powers enumerated in the power of attorney instrument. An attorney in fact with general powers has the power to act for the principal with respect to property held jointly by the principal. Such attorney in fact also has the power to agree to indemnify a third person from liability for acting or failing to act at the request of such attorney. An attorney in fact who has provided an indemnity agreement to a third party is not required to provide a bond if the attorney or principal has lived in the state for at least two years. An attorney in fact may be granted the power to designate a successor.

An attorney in fact has an obligation to act in the best interests of the principal. An attorney in fact who acts in bad faith or who acts knowing that his power has been terminated shall be liable to the principal for damages caused and may be liable for punitive damages. If a court finds that an attorney in fact has or is about to breach his duty to the principal, the court may suspend or modify the power of attorney to restrict the power of such attorney.

If no attorney in fact is available to act, the court may appoint an individual or financial institution to act as a successor attorney in fact rather than appoint a guardian or conservator.

If a power of attorney is executed by a non-Missouri resident, such power may be exercised according to the law which gives the attorney in fact the most discretion to act. 404.703, 404.705, 404.710, 404.714, 404.717, 404.723, 404.727, 404.730, and 474.490, RSMo 1994 and 404.719 and 456.520, RSMo Supp. 1996

SB 299 JUDICIAL PER DIEM

Increases the per diem paid to legislators from \$35 to about \$68 (no more than 80% of the federal reimbursement rate for Jefferson City). Also increases the per diem paid to judges attending the judicial conference to not more than 80% of the amount of the federal per diem for the city where the conference is held. 21.145 and 476.380, RSMo 1994

HCS SB 303 TRANSPORTATION DEVELOPMENT DISTRICTS

This bill makes changes in the law relating to the formation and funding of transportation development districts. There are new responsibilities for circuit clerks. 70.385, 70.390, 238.202, 238.207, 238.210, 238.212, 238.215, 238.220, 238.227, 238.230, 238.232, 238.235, 238.237 and 238.240, RSMo 1994

CCS HCS SB 347 HIV/PROSTITUTION

This bill revises the statute which makes it a crime for a person with HIV to engage in behavior which could expose another person to the disease. Violation of the provisions with a person under the age of 17 is a class C felony if the perpetrator is over the age of 21.

The bill also defines prostitution-related offenses and persistent prostitution offender and provides that a judge may order drug and alcohol abuse treatment for any person found guilty of prostitution, either after trial or upon a plea of guilty before sentencing. Upon the successful completion of the program, the court shall allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a plea of not guilty.

Any person who pleads guilty or is found guilty of a violation of section 567.020 or 567.030 and who is alleged and proved to be a persistent prostitution offender is guilty of a class D felony. 191.677, 567.010 and 567.020, RSMo 1994

HCS SS SB 361 CHILD SUPPORT (See Appendix for detailed summary.)

This legislation contains provisions mandated by recent federal law, making significant changes in how the state enforces child support obligations. The legislation also makes certain changes regarding child support generally which were not federally mandated.

Establishes a legal finding of paternity through the signing of acknowledgment forms and limits challenges of the acknowledgment.

Eliminates the right to a jury trial in paternity cases.

Requires courts to enter temporary orders of support pending disposition in some cases.

Grants the Division of Child Support Enforcement (DCSE) additional powers and duties, including: grants access to information from the State New Hire Directory, financial institutions, public utilities, and cable companies; may prevent an obligor from making fraudulent property transfers to avoid support obligations; may require individuals to submit to genetic testing; may administer oaths, issue subpoenas, compel appearance of a witness, and compel the production of evidence; and, may revoke passports.

Courts, upon request of a party or DCSE, have the authority to order the suspension of an obligor's professional, business, or occupational license for non payment of support. The Department of Conservation may suspend a recreational license upon the request of DCSE.

Changes emancipation statute requiring children in higher education to carry at least 12 hours of credit and obtain grades high enough to re-enroll. Allows parents to get child support credit for support paid directly for certain college expenses.

HCS SS SB 361 CHILD SUPPORT (Cont.)

A court with original jurisdiction over a dissolution may waive jurisdiction in a subsequent modification if retaining jurisdiction would clearly inconvenience any party and there is another court that will accept jurisdiction.

Establishes a state registry of child support cases which will periodically be uploaded to the national registry.

Expands IV-D confidentiality requirements.

Establishes a disbursement unit committee to determine the organizational structure necessary to comply with the federal mandate requiring that collection and disbursement of child support payments be centralized or linked.

Grants authority to courts to abate child support payments or to transfer custody of a child if the court determines that a parent has failed to provide visitation or custody to the other parent.

DCSE's administrative orders and decisions do not require signature of an attorney, nor do they require any further pleading other than the director's order.

Amends the Uniform Interstate Family Support Act to reflect changes made to that act last year at the federal level.

Contains an emergency clause to make legislation effective on July 1, 1997. 193.085, 193.087, 193.145, 193.215, 210.822, 210.832, 210.834, 210.839, 210.841, 210.842, 285.300, 285.302, 285.304, 288.250, 301.020, 301.190, 451.040, 452.305, 452.315, 452.345, 452.350, 452.370, 454.410, 454.415, 454.425, 454.440, 454.500, 454.455, 454.460, 454.465, 454.470, 454.475, 454.476, 454.485, 454.490, 454.495, 454.496, 454.505, 454.512, 454.513, 454.514, 454.515, 454.516, 454.517, 454.518, 454.519, 454.603, 454.808, 486.225 and 620.145, RSMo 1994, and sections 210.842, 452.340, 452.345, 454.400, 454.850, 454.855, 454.860, 454.862, 454.867, 454.869, 454.871, 454.877, 454.880, 454.882, 454.885, 454.887, 454.890, 454.895, 454.897, 454.900, 454.902, 454.905, 454.907, 454.910, 454.912, 454.915, 454.917, 454.927, 454.930, 454.932, 454.935, 454.937, 454.940, 454.942, 454.945, 454.947, 454.950, 454.952, 454.955, 454.957, 454.960, 454.962, 454.965, 454.967, 454.970, 454.972, 454.975, 454.977, 454.979, and 454.980, RSMo Supp. 1996

SCS SB 430 LOCAL SENTENCING ALTERNATIVES

Will promote local sentencing alternatives for certain offenders. The director of the Department of Corrections is to encourage the establishment of local sentencing alternatives. These programs are intended to make offenders more accountable to their victims, reduce the cost of supervising such offenders, and improve public confidence in the criminal justice system.

The bill includes victims of terrorism outside the US in those who can claim crime victims' compensation. This bill has an emergency clause. 595.010 and 595.020, RSMo 1994 and 217.010 and 217.777, RSMo Supp. 1996

HOUSE BILLS

HB 59 GREENE COUNTY PROBATE COMMISSIONER

Corrects the error in last year's legislation that provided for a probate commissioner in the thirtieth circuit rather than the thirty-first as was intended. 478.268, RSMo Supp. 1996

CCS SCS HS HCS HB 69 & 179 and HCS HB 669 LAW ENFORCEMENT ARREST POWERS

Expands the arrest powers of certain peace officers. Officers have authority to respond to emergency situations outside of their political subdivisions if they are authorized to carry a firearm and have successfully completed a law enforcement training program. In certain circumstances, federal officers have the same powers as a state certified peace officer.

In certain specified circumstances, certified peace officers and federal law enforcement officers may arrest a person without a warrant. 70.820, RSMo 1994, and 544.157, RSMo Supp. 1996

HB 104 SEX OFFENSES

Extends the statute of limitation for the prosecution of victims of sex offenses eighteen years old or under to ten years after the victim reaches the age of eighteen, as opposed to ten years after the commission of the offense. 556.037, RSMo 1994

CCS SS SCS HB 207 MOTOR VEHICLE FINANCIAL RESPONSIBILITY

This bill relates primarily to the motor vehicle commission. It also contains provisions which would make it a class C misdemeanor to fail to maintain financial responsibility for a motor vehicle or to fail to show proof of financial responsibility upon demand by any peace officer. The bill also requires proof of financial responsibility at the time a motor vehicle is registered. This part of the bill becomes effective January 1, 1998. 301.280, 301.550, 301.555, 301.557, 301.559, 301.562, 301.563, 301.564, 301.565, 301.572, 301.573, 303.024, 303.025, 303.026, and 303.030, RSMo 1994 and 301.140, 301.553, 301.560, 301.566 and 301.570, RSMo Supp. 1996

HB 265 PROBATION REVOCATION HEARINGS

Eliminates the provision in the statutes that makes a probation hearing an independent proceeding. 559.027, RSMo Supp. 1996

HB 339 WITNESS IMMUNITY

Provides that witnesses may not refuse to testify on the basis of the witnesses' privilege against self-incrimination when ordered to do so upon request by the prosecuting attorney and order of the court, but after complying with the order and giving the testimony or producing the evidence compelled by the order, no such person shall be prosecuted, punished or subjected to any penalty, criminal or otherwise, for or on account of any act, transaction, matter or thing which is the subject matter of the inquiry in which the person testifies or produces evidence, except a prosecution for perjury, giving a false or misleading statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order. If a person refuses to testify, he shall be adjudged in contempt and committed to the county jail for up to twelve months.

HB 339 WITNESS IMMUNITY (Cont.)

Any grand jury proceeding that includes testimony or other information from a witness who is granted immunity from prosecution shall be a recorded proceeding. In the event a person is indicted as a result of such immunized testimony, the prosecutor shall provide a transcription of such testimony to all defendants. Chapter 491 and 540, RSMo

SS SCS HB 343 ADOPTION REVISIONS

This bill makes numerous changes to the laws concerning adoption including: allows for termination of parental rights if the parent has been found guilty of a felony sex offense when the child was a victim; prohibits the two adult witnesses to the consent of the termination of parental rights or adoption from being either of the prospective adoptive parents; specifies a procedure by the prosecuting attorney and the Division of Family Services to file suit for injunctive relief against a foster home, residential care facility, or child placing agency; specifies where a petition for adoption may be filed; allows the court to appoint an attorney to represent the birth mother in certain situations; details what information about the prospective adoptive parents and child is required before the judge can enter an adoption decree; and details several criteria the court must use to determine whether custody should be transferred or an adoption should be finalized. 192.016, 193.125, 210.491, 211.444, 211.447, 453.005, 453.010, 453.014, 453.015, 453.025, 453.030, 453.040, 453.070, 453.073, 453.075, 453.080, 453.110, 453.170, and 568.175, RSMo 1994 and 210.109 and 453.060, RSMo Supp. 1996

SCS HCS HB 356 STATE EMPLOYEES RETIREMENT

Makes numerous changes to the Missouri State Employees Retirement System including: allows MOSERS state employees, administrative law judges, and judicial plan members to receive a new COLA after they reach the 65% maximum under the current COLA; adds an unreduced Joint and 50% survivor option for general employees and retroactively for retired members on or after October 1, 1984, and pop-ups; and provides that, for the 60 and 120 month options, lump sum payments are allowed at the present value of remaining payments to a beneficiary's estate. Chapters 104, 105, 287, 476, RSMo

SCS HS HCS HB 361 LANDLORD-TENANT

This bill makes numerous changes in the law governing landlord-tenant actions. The bill sets forth detailed procedures on adjudicating eviction proceedings based upon alleged criminal activity on the leased premises. The court may order the immediate removal of any person who engages in criminal activity on or in the immediate vicinity of the leased premises. Landlords may initiate eviction proceedings against such tenants. Any relevant evidence obtained in good faith by police is admissible in civil actions for eviction, including actions where the law enforcement agency is a party. Landlords are shielded from liability for claims that the tenant possesses or is distributing a controlled substance if such claims are supported by written notification of such activity by a law enforcement agency. The bill grants standing to prosecuting attorneys to bring civil actions for violations of provisions relating to eviction for criminal activity, and allows incorporated neighborhood associations to bring suit for such violations, upon a court's determination that the parties with standing have failed to pursue the matter with reasonable diligence. The bill also allows a court to issue restraining orders or grant any other preliminary relief necessary to prevent the commission of drug-related criminal activity, to protect the rights and interests of the parties to the lease, or to protect the rights of residents in the vicinity. However, the court may then stay the execution of an eviction if the moving party establishes by clear and convincing evidence that immediate eviction would pose a serious danger to the party and that this danger outweighs the safety and well-being of the surrounding community.

SCS HS HCS HB 361 LANDLORD-TENANT (Cont.)

The bill also requires the judge to expedite matters in forcible entry and unlawful detainer actions by: (a) allowing the service of summons to be had in 4 days instead of at least 5 days; (b) requiring the return date on the summons to be set no later than 10 days after service; (c) requiring the court to move the case to the next available spot on the docket upon return of the summons executed; and (d) restoring the property to the landlord within 15 days of the verdict;

The bill also establishes a "Landlord-Tenant Court" in the 22nd judicial circuit and in the 16th judicial circuit. Up to two landlord-tenant commissioners will be selected by a "Landlord-Tenant Court Judicial Commission" in each circuit. This commission will be composed of the presiding judge of the circuit, one circuit judge, one associate circuit judge and two people appointed by the mayor of St. Louis and the county executive of Jackson County. Each commissioner will be an employee of the city of St. Louis or Jackson County and will be paid one-third of an associate circuit judge's salary. The costs of each landlord-tenant court will be borne by the city of St. Louis or Jackson County, respectively. The bill sets forth procedures for the quick adjudication and resolution of landlord-tenant disputes, including requiring a return date of 10 days for each summons, an allowance of 10 days to file a motion for a rehearing and 20 days for the rulings on such motions. The judges will be authorized to make findings of fact and conclusions of law, and will be able to issue orders for the payment of money, delivery of possession of residential property or any other equitable relief necessary to resolve landlord-tenant disputes. However, the judges will not have authority to operate on an ex parte basis. 441.020, 441.040, 441.060, 441.130, 441.140, 534.030, 534.090, 534.330, 534.380, 535.020, 535.030, 535.040, 535.060, 535.070, 535.080, 535.090, 535.140, 535.160, and 535.170, RSMo 1994

SCS HB 379 WATERCRAFT REGULATIONS

This bill makes several changes in the law on watercraft. It also makes it a class C misdemeanor for the first offense of obstructing the flow of traffic upon a lake and a class B misdemeanor for second and subsequent offenses. 306.031, 306.060, 306.122, 306.125, 306.126, 306.142, 306.147, 306.221, 306.550, and 306.903, RSMo Supp. 1996

HB 540 GUARDIANS/MINORS

Specifies that the guardian of an incapacitated minor ward is not obligated because of that appointment to use his or her own financial resources for support of the ward. 475.120, RSMo 1994

HB 823 LOCAL SENTENCING ALTERNATIVES

Will promote local sentencing alternatives for certain offenders. The director of the Department of Corrections is to encourage the establishment of local sentencing alternatives. These programs are intended to make offenders more accountable to their victims, reduce the cost of supervising such offenders, and improve public confidence in the criminal justice system. This bill has an emergency clause. 217.010 and 217.777, RSMo Supp. 1996

SS SCS HS HB 850 ADMINISTRATIVE RULEMAKING

The bill contains several provisions related to administrative rulemaking. The bill:

- (1) Permits the Joint Committee on Administrative Rules to file comments on any proposed, emergency, or final rule with the Secretary of State to be printed in the Missouri Register. Comments may also be filed with the appropriations and budget committees of the House and Senate;

SS SCS HS HB 850 ADMINISTRATIVE RULEMAKING (Cont.)

- (2) Allows a party who prevails against an agency in a law suit challenging the validity of a rule or the threatened application of a rule to be awarded reasonable fees and expenses, including attorneys fees;
- (3) Allows an agency to promulgate an emergency rule if the rule is necessary to preserve a compelling governmental interest;
- (4) Prohibits agencies from adopting consecutive emergency rules that have substantially the same effect;
- (5) Prohibits the Secretary of State from publishing any proposed order of rulemaking or final order of rulemaking when the agency has not filed the rule with the Joint Committee;
- (6) Requires the Joint Committee to report its disapproval of a rule to the House of Representatives and the Senate; and
- (7) Repeals certain procedures relating to administrative rulemaking, some of which have been declared unconstitutional.

Several of the sections in the bill have a conditional effective date. These sections become effective 20 days after: the Governor fails to sign executive order 97-97; the Governor modifies, amends or rescinds executive order 97-97; an agency fails to hold a rule in abeyance as required by executive order 97-97; executive order 97-97 is declared unconstitutional or the section of law which requires agencies to file with the Joint Committee on Administrative Rules is declared unconstitutional.

These sections:

- (1) Prohibit rules from becoming effective prior to expiration of 30 legislative days after the rule has been filed with the General Assembly;
- (2) Require agencies to prove that the agency's action was not required to be preceded by the adoption of a rule when the action is challenged;
- (3) Require agencies to propose rules based upon substantial evidence on the record and a finding that the rule is necessary to implement the statute;
- (4) Require rules to be based on reasonably available empirical data; and
- (5) Require rules to be based on an assessment of the effectiveness and the cost of the rule to any private or public person or entity affected by the rule.

The bill has an emergency clause. 536.021, 536.022, 536.023 and 536.041, RSMo 1994 and 536.024, 536.025 and 536.050, RSMo 1996

HB 883 OFFENDER REGISTRATION

Expands the offenders who must register with law enforcement to include those convicted of kidnapping, promoting prostitution in the first, second and third degree, incest, child abuse, use of a child in a sexual performance, and promoting sexual performance by a child with another minor as the victim. The bill also recodifies this law in chapter 589, RSMo, from chapter 566.

APPENDIX

CCS HCS SS SB 248 JUDICIAL PROCEDURES

- 56.765 Amends section to provide for creation of a Missouri Office of Prosecution Services Revolving Fund, to include registration fees, grants and other moneys collected by the Missouri Office of Prosecution Services. It is anticipated that this fund will be used to collect fees for training seminars.
- 57.766 As a result of a drafting error in the final version of 1996 SB 869, only the sheriffs' charge for felony cases was included. This section is amended to provide the reduced charges for misdemeanors and infractions, and allows sheriff to share between themselves portions of such charges for work done by multiple sheriffs. Provides charges of \$75 for felonies, \$10 for misdemeanors and \$6 for infractions.
- 67.133 Corrects a drafting error from 1996 SB 869 by providing reduced county fees for infractions and cases hearable by traffic violations bureaus of \$10. Currently the section provides \$25 for misdemeanors (and infractions) and \$75 for felonies.
- 115.575 Amended to provide that judicial election contests shall be filed in an adjoining circuit.
- 217.576 Amended to allow commitment orders to be delivered to the Department of Corrections electronically.
- 217.730 Amends statute relating to general probation and parole to exempt judicial parole from statute requiring that time served on probation and parole is to be credited to term of incarceration.
- 302.225 Allows courts, at the option of the Highway Patrol, to directly enter information relating to traffic violators in the Department of Revenue electronic drivers' license system.
- 374.715 Amends bail bond licensing law, to require prospective bail bondsman to meet the requirements of supreme court rule as well as the requirements of this section.
- 374.763 Provides a system whereby bail bondsmen who fail to satisfy bond forfeiture judgments shall be reported to the Department of Insurance, which will in turn periodically provide a list of duly licensed and qualified bail bondsmen to each circuit court.
- 429.090 Deletes requirements that abstract of mechanics' liens be a written record.
- 429.120 Requires that acknowledgment of satisfaction of mechanics' liens be in writing and deletes provisions allowing marginal satisfaction of such liens.
- 429.470 Deletes requirements that abstracts of railroad liens be a written record.

429.490 Requires that acknowledgment of railroad liens be in writing and deletes provisions allowing marginal satisfaction of such liens.

452.345 Restricts applicability of requirements of subsection 5 of this section, relating to procedures for delinquent child support, to support orders entered prior to January 1, 1994 (federal law supersedes this provision and applies to orders after that date).

476.010 Defines courts of record as including all divisions of the circuit courts keeping a record of their proceedings, but specifically excluding municipal divisions.

476.050 Deletes requirement that court records be kept on paper in the English language; provides that records shall be kept as required by Supreme Court rule.

476.053 Amends section to correct reference to court automation "surcharge" to "fee" (see, Section 488.010, RSMo Supp. 1996).

476.055 Relates to court automation; amended as follows:

- a. Allows the court automation project to receive moneys from sources other than court costs, to further the automation project (i.e., gifts, grants, etc.).
- b. Extends the surcharge from 1999 to 2004 (the project was originally set to extend for 10 years).
- c. Allows the Court Automation Committee and the project to continue to 2007, but provides that Statewide Court Automation Fund moneys shall lapse to general revenue on September 1, 2004.
- d. Provides for four legislator-members of the Court Automation Committee.

476.056 Allows adoption of court automation project by municipalities for benefit of municipal courts, by agreement between the municipality and the State Courts Administrator; and for the assessment of court costs in municipal court proceedings in order to finance such costs.

476.057 Creates a training fund for judicial personnel with revenue source from court fees collected by the state.

476.062 Codifies case law; allows judicial marshals to carry guns and exercise arrest powers in furtherance of their duties.

476.083 Section relating to circuit court marshals amended to provide that salary of any such marshal shall be 90% of the highest-paid sheriff rather than 90% of any sheriff within the circuit.

476.385 Various technical amendments to the section establishing the central violations bureau, clarifying that the bureau will collect court costs in addition to fines and that payment of fines for violations constitute guilty pleas.

476.600 Amends the section establishing the Judicial Finance Commission to account for the diminishing number of second (and fourth) class counties, by allowing one member of the commission to be appointed from any class of county rather than from a second class county. At this time there are only two second class counties.

478.012 Provides that the term "circuit court" when referring to where a case must be filed includes all divisions of the circuit court where the case can be filed.

478.466 Amends the section of law creating the Jackson County drug commissioner by providing for judicial retirement for this position. Also the state shall pay the salary of this commissioner, subject to reimbursement by the county.

479.260 Clarifies that \$15 court fee, rather than \$12 fee, is to be charged only when a municipal court case is originally filed before, and not merely heard by, an associate circuit judge. Also provides for a municipal court training fund, at the option of each municipality, to be funded from existing court costs.

488.015 Amended to clarify procedure for adjustment of court costs; clarifies that Supreme Court cannot increase amount of court fees in excess of 4% per year, exclusive of caseload growth.

488.020 Amended to allow the Office of Administration to deduct unpaid court costs from any payments made by the state, rather than checks only.

488.023 Temporary section provides for 80/20 split of fees between state and counties, between July 1, 1997 and effective date of court order providing centralized collection.

488.200 Provides for collection of a fee for cases disposed of by the central violations bureau (Section 476.085). One-half of such fee shall be payable to the state to defray the cost of operation of the bureau, and one-half shall be payable to the county in which the violation originated.

509.030 Eliminates requirement that civil pleadings be physically signed by a party or his/her attorney. Requires that name of party/attorney be affixed, and that any requirement that pleading be verified may be met that pleading is made under penalty of perjury. Will allow electronic filing of pleadings.

511.500 Deletes requirement that judgment abstract be a written record.

511.510 Amended consistently with amendments to Section 511.500.

512.050 Amended to require payment for appellate transcripts be made within 10 days that the court reporter informs the party of the cost of the transcript and the estimated cost of the transcript is provided the party, and eliminates the \$10 appellate docket fee.

513.045 Eliminates requirement that abstract of executions on civil judgments be a written record.

543.335 Deletes requirement that electronic record of cases heard by associate circuit judges necessarily be transcribed upon appeal.

545.040, 545.050, 545.060, 545.070, 545.240, 545.270 and 545.930

(Section 545.930 is new)

Deletes requirement that pleadings in criminal cases be physically signed.
Will allow electronic filing of criminal pleadings pursuant to court automation.

- 559.027 Repeals statute enacted in 1996 providing that probation revocation proceedings are independent proceedings.
- 559.029 Amends statute enacted in 1996 relating to transfer of cases under probation supervision, to require transfer pursuant to local court rule rather than by agreement between two judges.
- 559.615 Amended to prohibit any elected county official with direct court supervision responsibilities, from having a material financial interest in a private probation supervision or rehabilitation service.
- 577.051 Allows courts, at the option of the Highway Patrol, to directly enter information relating to traffic violators in the Department of Revenue electronic drivers' license system.
- 590.140 Amends section to delete requirement that counties and municipalities must enact an order or ordinance providing surcharges to the Peace Officer Standards and Training Commission Fund in order to draw from the fund.
- 595.045 During the 1996 legislative session, both SB 769 and SB 869 were enacted amending Section 595.045. SB 769 contained some of the amendatory material contained in SB 869, and SB 869 contained all of the amendments of SB 769 and some additional material. This legislation repeals Section 595.045 as amended by 1996 SB 769.

Sections 1 and 2 - Provides for legislative review of state agency administrative rules.

Emergency clause - Certain sections of the bill are subject to an emergency clause in order that they may be effective at the same time that the corresponding changes from 1996 SB 869 also take effect.

HCS SS SB 361 CHILD SUPPORT ENFORCEMENT ACT

This legislation contains provisions mandated by recent federal law, making significant changes in how the state enforces child support obligations. The legislation also makes certain changes regarding child support generally which were not federally mandated. The following is a synopsis of the main provisions in the legislation:

Effective date July 1, 1997

PATERNITY:

- 193.085 Requires consent affidavits or a paternity determination in order for a father's name to be entered on a birth certificate when the parents are unmarried. If the mother is married, consent to name a putative father will require that the husband sign an affidavit attesting that he is not the father, in addition to the consent affidavits of the mother and putative father.

193.087 Any affiant who intentionally misidentifies another person as a parent may be prosecuted for perjury.

193.215 The acknowledgment form shall contain the notarized signature of the parents and be witnessed by at least two disinterested adults. The form will allow for changing the surname of the child on the birth certificate. Accompanying the form shall be both an oral and written notice to the mother and the putative father of the legal consequences and alternatives to signing the form. In addition, the notices will state the benefits of establishing paternity and give information on the availability of enforcement services.

210.823 Establishes a legal finding of paternity through a signed acknowledgment of paternity form that is filed with the Bureau of Vital Records. The ability to challenge paternity is limited and child support obligations continue during any action to revoke an acknowledgment. No judicial or administrative proceeding shall be required or permitted to ratify an unchallenged acknowledgment of paternity.

Requires full faith and credit be given to paternity acknowledgments from other states.

210.832 Requires courts to enter temporary support orders while a paternity action is pending if there is clear and convincing evidence establishing a presumption of paternity. The order shall be retroactive to the date of service of the motion or the date of the acknowledgment or presumption, whichever is later. See also 454.475 below.

210.834 Changes evidentiary requirements for proof of chain of custody of blood testing process and changes requirements to be an "expert" in genetic testing. Redefines the term "expert".

210.839 Eliminates right to a jury trial in paternity cases.

Discusses the admission of copies of bills for pregnancy, childbirth or genetic testing in a paternity case.

210.842 Changes the wording from "court may order reasonable fees for" counsel, experts, etc. to "court may enter judgment in the amount of the reasonable fees for".

454.485 Grants the director of DCSE the authority to order genetic testing of a child, mother or alleged father in paternity cases, to be performed by the division's designated expert. Failure to comply with such order shall constitute civil contempt.

NEW HIRE PROGRAM:

285.300 Requires employers to collect information on new hires and to report the information to federal and state agencies.

285.302 Intentional failure to comply with new hire reporting will subject employers to sanctions.

SUPPORT ORDERS:

452.315 Requires courts to enter temporary support orders while a dissolution of marriage is pending if there is clear and convincing evidence establishing a presumption of paternity.

452.340 Adds factors to determination of amount of support. The reasonable work-related child care expenses for both parents were added as a factor.

Establishes that it is in the best interests of children to have frequent, continuing and meaningful contact with both parents. The court is now required to enforce visitation, custody and child support orders in the same manner.

Grants authority to courts to abate child support payments or to transfer custody of a child if it determines that a parent has failed to provide visitation or custody to the other parent.

452.347 In a case to establish or modify a support order where one of the parties is an applicant or recipient of IV-D services, they must receive notice of the proceeding by any other party.

Where one of the parties is an applicant or recipient of IV-D services, the court is required to mail a copy of any order establishing or modifying a child support order, or order denying modification, to DCSE within 14 days of issuance.

454.455 Extends rules for non parent caretaker relative cases to apply in non AFDC cases as well as AFDC cases.

Although there is no plan to change DCSE policy at this time, this statute appears to allow DCSE to change the payee in foster care cases where the case was in an AFDC status.

Grants DCSE the authority to notify obligors and other payees to redirect their child support payments to a state disbursement unit.

454.460 Defines "support order" as it pertains to the administrative process.

454.490 DCSE or the court, upon petition of DCSE, has the authority to order an obligor to pay arrearages in accordance with a court approved plan and, if not incapacitated, may require the obligor to participate in statutorily defined work activities.

EMANCIPATION:

452.340 Changes the emancipation statute. Children in a secondary school may only get support up to the age of 21 if they are progressing toward completion of the program they are enrolled in. Children enrolled in a vocational institution or higher education may continue to receive support up to age 22 if the child is enrolled and completes at least 12 credit hours per term and receives grades sufficient to re-enroll in that institution. The child must submit an official transcript, with grades and a list of classes registered for in the upcoming session, to each parent.

With some limitations, a parent may now opt to pay one-half of the college expenses as defined in the legislation in lieu of child support. If these expenses are less than the ordered child support, the parent must pay the difference in child support. To qualify, the child must be enrolled as a full-time student and live away from home a majority of year. Provisions for college expenses must not be specified in a parenting plan or court order.

452.370 If a custodial parent fails to notify the noncustodial parent that a child has been emancipated, they are now liable for interest as well as the overpayment made on support.

GUIDELINES:

452.340 Requires the Supreme Court to publish a list of the relevant factors and assumptions that were used to calculate the child support guidelines. Changes the review time period requirement from every four years to every three years.

When the court or DCSE determines that a deviation is required, and upon request of a party, the tribunal must make a written finding or specific finding on the record detailing the specific relevant factors for the deviation from the application of the guidelines.

452.370 The twenty percent threshold test for modification of a child support order has been altered. If application of guidelines shows a twenty percent change, the case is subject to modification only if the existing amount was also based on guidelines.

The twenty percent threshold for modification no longer applies to IV-D cases. DCSE must modify a child support order if the existing amount of support is different from what would be awarded under guidelines.

WAGE WITHHOLDING:

452.350 Changes the number of days that an employer has to transmit child support amounts deducted from payroll from ten days to seven business days. The term "business day" is defined as a day that the state offices are open.

Requires the court to use a standard wage withholding notice once the Department of Health and Human Services creates it.

454.505 DCSE is authorized to bring an action in circuit court to determine the liability of an employer or other payor for failure to comply with wage withholding. Sanctions include fine, costs and attorney fees.

Provides sanctions for employers who discharge, refuse to hire, or discipline an employee for an order to withhold.

Defines "income" for purposes of wage withholdings.

DCSE will be required to use the Department of Health and Human Services' standard form for wage withholding, if one is developed.

ENFORCEMENT:

454.395 When the federal government finalizes the standardized interstate forms such as for wage withholding, liens, and administrative subpoenas, the courts will be required to recognize them as valid.

454.400 DCSE may prevent an obligor from making fraudulent property transfers to avoid support obligations.

454.401 Grants DCSE the authority to administer oaths, issue subpoenas, compel the appearance of a witness and require the production of evidence. If a person refuses to comply, DCSE will request the courts to use their power of contempt.

454.511 DCSE may certify a person owing an arrearage exceeding \$5,000 to the appropriate federal agency for the purpose of denying, revoking or suspending a passport.

STATE CASE REGISTRY:

454.412 Requires DCSE to establish a "State Case Registry". Clerks will be required to provide DCSE with the necessary data elements for each support order established or modified by a circuit court on or after October 1, 1998. The information in the state registry will periodically be uploaded to the federal registry.

454.413 Requires all parties in cases involving paternity or child support to file with the court or the division the information necessary to meet the requirements of the state registry. If that information subsequently changes, a party has 30 days to file updated information with the court or the division.

In subsequent support proceedings, after an effort has been made to ascertain the location of the party, the court and the division may deem that due process requirements for notice and service are met with respect to such party by delivering written notice to the most recent address filed with the court or the division.

LOCATION OF PERSONS AND ASSETS:

454.440 Extends DCSE's access to obtain the location of financial resources to include the Bureau of Vital Statistics; tax and revenue records; records on real or personal property; records of occupational and professional licenses; records on recreational licenses or permits; records on ownership or control of corporations, partnerships or other business; employment security; motor vehicle; records of assets or liabilities; Correction records; employer addresses; and, law enforcement records.

Allows DCSE to subpoena information from public utilities or cable television companies.

Grants DCSE authority to use their information access rights to assist parents in locating the other parent for purposes of enforcing a visitation or custody order as well as to enforce an order of support.

454.507 DCSE is required to enter into agreements with financial institutions for the purpose of developing and operating an automated data match system to locate resources and establish liens. Limits are established on joint accounts and a joint owner may petition a court to determine that their interest in an account is disproportionate to that of the noncustodial parent's.

IV-D CONFIDENTIALITY:

454.440 Extends current IV-D confidentiality to include information relating to proceedings or actions to establish paternity or to establish or enforce support.

State employees are specifically prohibited from disclosing any location information of one party to another party if there is a protective order entered against the other party or if there is reason to believe that such disclosure of information may result in physical or emotional harm to the other party.

ADMINISTRATIVE HEARINGS AND PETITIONS FOR JUDICIAL REVIEW:

454.470 Extends the right to receive a copy of DCSE's notice and finding in an administrative order of support beyond just the noncustodial parent. An aggrieved custodial parent or the person having custody may now request an administrative hearing and file for a petition of judicial review.

454.475 The time period for parents to request a hearing to contest a notice and finding of a support obligation has been altered. The 30 day period for filing a petition for judicial review begins on the date that the administrative hearing officer mails the party a copy of the dissolution. Previously the time period began when the party received the notice.

454.476 In addition to the obligor, the obligee now has the right to contest an administrative order on an existing order (CSE 616).

454.496 In administrative modifications of judicial orders, after the 30 day time period for petition for judicial review has passed, the court has 15 days to render its decision,

If a petition for judicial review is requested or the court determines to set the matter for trial de novo, the court must notify the parties and DCSE of such proceedings.

TEMPORARY ORDERS OF SUPPORT:

454.475 DCSE has the authority to enter a temporary order of support in administrative cases when a hearing is requested by a parent, a parent requests a temporary order, and there is clear and convincing evidence establishing a presumption of paternity. The temporary order is not subject to a hearing but a court may stay the order after it conducts a hearing and determines that the order does not comply with rule 88.01.

ATTORNEY SIGNATURES ON FILINGS:

454.490 Administrative orders and division decisions do not require signature of an attorney, nor do they require any further pleading other than the director's order. [Note: This statute was adopted in response to an interpretation that the appellate decision, Minx v. Minx , applied to all administrative filings. At this time, DCSE does not interpret this statute to apply to administrative modifications of judicial orders and will continue to file them with attorney signature.]

LIENS:

454.515 Authorizes DCSE to revive a real estate lien by filing a subsequent lien within three years of the original lien. In addition, DCSE may execute a partial or total release of an administrative lien.

Removes all language naming clerks to act as trustee for real estate lien payments. In addition, removes language pertaining to affidavits attesting to unpaid installments. Clerks will now process all real estate liens in a similar manner. [Note: DCSE has tentatively determined that on IV-D liens, the lien forms will instruct obligors to make lien payments in non-AFDC cases to the clerk trustee in the county where the support order was created. In AFDC cases, obligors will be instructed to make payments either to the established clerk trustee or directly to the state. If lien payments are made to the state, DCSE will provide notice to the clerk trustee for credit to the child support case.]

Removes language allowing liens for child support to increase each month as an obligation matures. Real estate liens now will be for a finite amount. A subsequent lien filing will be required if the obligee wishes to place a lien on obligations accruing after a previous lien filing.

COLLECTION AND DISBURSEMENT:

454.530 Directs the state to establish and operate a disbursement unit by October 1, 1999, for the collection and disbursement of child support payments that are IV-D and all those issued on or after January 1, 1994.

Establishes a disbursement unit committee to determine the organizational structure necessary to meet the federal mandate requiring that collection and disbursement of child support payments be centralized or linked.

MEDICAL SUPPORT:

454.603 When ordering health benefits in IV-D cases, the court and DCSE are no longer limited by whether or not a plan is available at a reasonable rate through an employer.

AUTOMATION:

454.808 Extends the MACSS installation date to October 1, 1997. Gives the state until October 1, 2000, to update the system to include any additional requirements enacted in last year's Personal Responsibility and Work Opportunity Reconciliation Act.

UIFSA:

454.850 - Makes technical changes to UIFSA due to updated federal mandates. The main
454.997 statutory updates include:

Direct withholding for medical support.

An order can now be registered and modified when there is only one order and none of the parties remain in the original state.

Either party can ask a tribunal to make a controlling order determination without opening a case.

DCSE may become a registering tribunal without having to refer the case to a prosecuting attorney or go through the circuit courts. [NOTE: At this time DCSE is unsure when this policy will be implemented.]

LICENSE REVOCATION:

454.1003 Grants courts authority to order the suspension of an obligor's professional, business, occupational, or driver's license for nonpayment of support. The obligor must be in arrears an amount equal to 3 months of support or \$2,500, whichever is less. DCSE may, in IV-D cases, order an obligor's drivers license be suspended for nonpayment of support or for noncompliance with an order to submit to genetic testing.

454.1005 Obligor has 60 days from date of service of the notice of intent to suspend a license, to request a hearing to show cause or to comply with a payment plan. The court or DCSE must grant a stay of the suspension of the license pending the outcome of the hearing.

454.1008 Upon notice that an obligor's license was ordered suspended, a licensing authority must suspend the license without any additional review or hearing. The suspension must continue until further notice by the court or DCSE.

An obligor who continues to engage in business or a profession after a license suspension is guilty of a class A misdemeanor.

454.1010 An obligor may, at any time, petition the court or DCSE to stay a suspension of a license. Only a court can stay a petition for the reason that it would create a significant hardship. The court and DCSE may stay a suspension upon entry of a payment in compliance with an existing payment plan.

454.1020 Requires licensing authorities subject to these sections to provide specific information to DCSE.

454.1023 Authorizes DCSE to enter into a cooperative agreement with the clerk of the Supreme Court to annually supply a list of all persons licensed to practice law. DCSE will notify the Court if any attorneys owe an arrearage amount equal to three months of support or \$2,500.

454.1025 Requests the Supreme Court to establish procedures to suspend or sanction attorneys who are within the specified support arrearage amount. The process is to be in place by July 1, 1998.

454.1027 Upon notice from DCSE, the Dept. of Conservation may suspend a motor vehicle or recreational license of an obligor.

Section 3 Licenses shall not be suspended for obligors making regular support payments in accordance with payment plans created by agreement with DCSE.

JURISDICTION:

Section 4 A court with original jurisdiction over a dissolution may waive jurisdiction in a subsequent modification if retaining jurisdiction would clearly inconvenience any party and there is another court which will accept jurisdiction.

SOCIAL SECURITY NUMBERS:

Various Requires social security numbers to be recorded on death records (193.145); paternity judgments or orders (210.841); applications for marriage licenses [Note: Adds confidentiality] (451.040); real estate liens (454.515); dissolution decrees (452.305); orders for child custody, child support, modification or visitation (Section 2); administrative modifications (454.500); and, applications for appointment as a notary public (486.225). Social security numbers are also required on all applications or renewals for professional, occupational, or recreational licenses, permits or certificates (454.403, 620.145, Section 1).